

Cause No. _____

Sharon McCleveland,
d/b/a Set 'Em Free
Bail Bonds; Kelvin Hampton, Sr.
d/b/a A Better Bail Bond; and
Mario Garza d/b/a 1st
Advantage Bail Bonds

Plaintiffs

v.

Honorable Alex Salgado,
Honorable Ronnisha Bowman,
Honorable Erica Hughes,
Honorable Shannon Baldwin,
Honorable David M. Fleischer,
Honorable Kelley Andrews,
Honorable Andrew A. Wright,
Honorable Franklin Bynum,
Honorable Toria J. Finch,
Honorable Lee Harper Wilson,
Honorable Sedrick T. Walker II,
Honorable Raul Rodriguez,
Honorable David L. Singer,
Honorable Tonya Jones,
Honorable Darrell Jordan, and
Sheriff Ed Gonzalez,

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORIGINAL PETITION, VERIFIED APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND
TEMPORARY INJUNCTION, REQUESTS FOR DISCLOSURE, AND JURY DEMAND

Comes now Sharon McCleveland, d/b/a Set 'Em Free Bail Bonds, Inc.; Kelvin Hampton, Sr., d/b/a A-Better Bail Bond; Mario Garza d/b/a 1st Advantage Bail Bonds, plaintiffs, and files their Original Petition, Verified Application for Temporary Restraining Order and Temporary Injunction, Requests for Disclosure, and Jury Demand, complaining of defendants Honorable Alex Salgado, Honorable Ronnisha Bowman, Honorable Erica Hughes, Honorable Shannon Baldwin, Honorable David M. Fleischer, Honorable Kelley Andrews, Honorable Andrew A. Wright, Honorable Franklin Bynum, Honorable Toria J. Finch, Honorable Lee Harper Wilson, Honorable Sedrick T. Walker II, Honorable Raul Rodriguez, Honorable David L. Singer, Honorable Tonya Jones, and Honorable Darrell Jordan, solely in their official capacity as policymakers for Harris County, Texas, and Ed Gonzalez, solely in his official capacity as Harris County Sheriff, and would respectfully show unto the court as follows:

I. Discovery Level

1.1. Discovery shall be conducted pursuant to Level 2.

II. Rule 47(c) statement

2.1. Plaintiffs seek equitable, injunctive relief only. Plaintiffs seek no monetary damages.

III. Parties, Jurisdiction, and Venue

3.1. Plaintiff Sharon McCleveland d/b/a Set 'Em Free Bail Bonds, Inc. is an individual residing and doing business at 3206 Houston Ave, Houston, Harris County, Texas 77009. The last three digits of her driver's license no. are 786. The last three digits of her Social Security no. are 740. She appears in her own capacity and as agent-in-fact for Financial Casualty & Surety Inc., her underwriter.

3.2. Kelvin Hampton d/b/a A Better Bail Bond is an individual residing and doing business at 1416 Washington Avenue, Houston TX 77002. The last three digits of his driver's license no. are 344. The last three digits of his Social Security no. are 517. He appears in his own capacity as a property bondsman.

3.3. Mario Garza d/b/a 1st Advantage Bail Bonds, is an individual residing and doing business in Harris County at 2429 Telephone Rd, Houston, Harris County TX 77023. The last three digits of his driver's license

no. are 828. The last three digits of his Social Security no. are 551. He appears in his own capacity and as agent-in-fact for Bankers Insurance Co.

3.4. Defendant Honorable Alex Salgado is the duly-elected judge of the Harris County Criminal Court at Law No. 1. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.¹

3.5. Defendant Honorable Ronnisha Bowman is the duly-elected judge of the Harris County Criminal Court at Law No. 2. She is sued solely in her official capacity as policymaker for Harris County. She is not sued in her judicial capacity.

3.6. Defendant Honorable Erica Hughes is the duly-elected judge of the Harris County Criminal Court at Law No. 3. She is sued solely in her official capacity as policymaker for Harris County. She is not sued in her judicial capacity.

¹ All defendants are sued in their official capacity on the basis that their actions are *ultra vires* and thus not barred by sovereign immunity. See, e.g., *City of El Paso v. Heinrich*, 284 S.W.3d 366, 368 – 69 (2009) (“We conclude that while governmental immunity generally bars suits for retrospective monetary relief, it does not preclude prospective injunctive remedies in official-capacity suits against government actors who violate statutory or constitutional provisions.”). Defendant-judges are referred to herein as “Judicial Defendants”.

3.7. Defendant Honorable Shannon Baldwin is the duly-elected judge of the Harris County Criminal Court at Law No. 4. She is sued solely in her official capacity as policymaker for Harris County. She is not sued in her judicial capacity.

3.8. Defendant Honorable David M. Fleischer is the duly-elected judge of the Harris County Criminal Court at Law No. 5. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.9. Defendant Honorable Kelley Andrews is the duly-elected judge of the Harris County Criminal Court at Law No. 6. She is sued solely in her official capacity as policymaker for Harris County. She is not sued in her judicial capacity.

3.10. Defendant Honorable Andrew A. Wright is the duly-elected judge of the Harris County Criminal Court at Law No. 7. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.11. Defendant Honorable Franklin Bynum is the duly-elected judge of the Harris County Criminal Court at Law No. 8. He is sued solely in his

official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.12. Defendant Honorable Toria J. Finch is the duly-elected judge of the Harris County Criminal Court at Law No. 9. She is sued solely in her official capacity as policymaker for Harris County. She is not sued in her judicial capacity.

3.13. Defendant Honorable Lee Harper Wilson is the duly-elected judge of the Harris County Criminal Court at Law No. 10. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.14. Defendant Honorable Sedrick T. Walker, II is the duly-elected judge of the Harris County Criminal Court at Law No. 11. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.15. Defendant Honorable Raul Rodriguez is the duly-elected judge of the Harris County Criminal Court at Law No. 13. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.16. Defendant Honorable David L. Singer is the duly-elected judge of the Harris County Criminal Court at Law No. 14. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.17. Defendant Honorable Tonya Jones is the duly-elected judge of the Harris County Criminal Court at Law No. 15. She is sued solely in her official capacity as policymaker for Harris County. She is not sued in her judicial capacity

3.18. Defendant Honorable Darrell Jordan is the duly-elected judge of the Harris County Criminal Court at Law No. 16. He is sued solely in his official capacity as policymaker for Harris County. He is not sued in his judicial capacity.

3.19. Defendant Ed Gonzalez is the duly-elected Sheriff of Harris County. He is sued solely in his official capacity as sheriff.

3.20. Defendants reside and act as policymakers and law enforcement for Harris County and are within the *in personam* jurisdiction of Texas courts. District courts are courts of general jurisdiction under Article V § 8 of the Texas Constitution and Tex. Gov't Code §§ 24.007 and 24.008, thus the relief sought is within the court's subject matter jurisdiction. Venue is proper in

Harris County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) in that all or a substantial part of the acts or omissions giving rise to the complaint occurred here.

IV. Facts

4.1. An individual detained and accused of committing a crime has a right under Article XI of the Texas Constitution to bail by sufficient sureties. This state constitutional right is codified in chapter 17 of the Code of Criminal Procedure.

4.2. Tex. Code Crim. Pro. Art. 17.01 defines “bail” as “the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond.”

4.3. Tex. Code Crim. Pro. Art. 17.02 defines “bail bond” as “a written undertaking entered into by the defendant and the defendant’s sureties for the appearance of the principal therein before a court or magistrate to answer a criminal accusation; provided, however that the defendant on execution of the bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same.”

4.4. Tex. Code Crim. Pro. Art. 17.03(a) provides that, in some cases, “a magistrate may, in the magistrate’s discretion, release the defendant on personal bond without sureties or other security.” Art. 17.04(3) requires a personal bond to include an oath sworn by the defendant to appear or pay a liquidated amount plus expenses incurred in any arrest for failure to appear. A personal bond is also called a personal recognizance or PR bond.

4.5. Thus, Texas law defines a bail bond as a written undertaking entered into by the defendant in the state to ensure appearance. A bail bond under Texas law can be a cash bond, a bond with a surety, or a bond without a surety.

4.6. Article 17.15 sets the rules for fixing the amount of bail. It authorizes the court, judge, magistrate, or officer taking the bail, exercising their individual discretion, to set bail by the following rules:

- (1) The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with;
- (2) The power to require bail is not to be so used as to make it an instrument of oppression;
- (3) The nature of the offense and circumstances under which it was committed are to be considered;

- (4) The ability to make bail is to be regarded, and proof may be taken upon this point; and
- (5) The future safety of a victim of the alleged offense and the community shall be considered.

4.7. Article 17.25 requires the magistrate, “after a full examination of the testimony,” to make an order that the accused execute a bail bond with sufficient surety, conditioned on his appearance before the proper court, “if the case be one where bail may properly be granted and ought to be required.”

4.8. Texas common law prohibits differential secured bail bonds, i.e., setting one amount for a surety bond and a different (lower) amount for a cash bond.²

4.9. Pursuant to chapter 1704 of the Texas Occupations Code, plaintiff Sharon McCleveland is licensed to write bail bonds in Harris County by the Harris County Bail Bond Board under license no. 74487 and is the agent-in-fact for Financial Casualty & Surety, Inc., underwriter. She is also licensed to write bail bonds in Montgomery County by the Montgomery

² See *Professional Bondsmen of Tex. v. Carey*, 762 S.W.2d 691, 693 (Tex. App. — Amarillo 1988, no writ).

County Bail Bond Board and in Dallas County by the Dallas County Bail Bond Board. Kelvin Hampton is licensed to write bail bonds in Harris County under license no. 74504. Mario Garza, individually and d/b/a 1st Advantage Bail Bonds, is licensed to write bail bonds in Harris County under license no. 74485 and is the agent-in-fact for Bankers Insurance Co. Fidelity and Bankers are the corporate sureties for McCleveland and Garza, respectively. Commercial bail bondsmen typically charge 10% of the face amount of the bond as consideration for issuing the bond. In exchange, they risk forfeiting the face amount of the bond and are also liable for the governments' costs for any costs incurred in rearresting the defendant should he or she fail to appear. Plaintiffs' right to make a living by writing surety bail bonds is a protected liberty and property interest under the Texas

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constitution.³ As such, plaintiffs have standing to challenge bail bond policies that threaten their livelihood.⁴

4.10. On or about January 17, 2019, purportedly acting pursuant to Tex. Gov't Code § 74.503, the Hon. Darrell Jordan, presiding judge of the Harris County Criminal Courts of Law and pursuant to a 2/3 or greater majority vote of the other Harris County Criminal Court at Law judges, voted to amend Local Rule 9.1 of the Harris County Criminal Courts at Law.⁵ Amended Local Rule 9.1 has thus been enacted and will be implemented on or about February 16, 2019.

³ See *Smith v. Decker*, 312 S.W.2d 632, 633 (Tex. 1958) (issuing injunction in favor of bail bondsmen enjoining sheriff from enforcing unconstitutional statute infringing on their state constitutional right to earn a living writing bail bonds); see also *Font v. Carr*, 867 S.W.2d 873, 875 (Tex. App.—Houston [1st Dist.] 1993, no writ) (affirming that “[t]he right to earn a living by writing bail bonds is a property right protected by the Texas Constitution” in affirming the denial of a prosecutor’s motion for summary judgment on immunity grounds where prosecutor urged sheriff to deny bail bondsmen’s bonds on ground other than that authorized by law).

⁴ See *Castaneda v. Gonzalez*, 985 S.W.2d 500, 502 (Tex. App.—Corpus Christi 1998, no pet.) (“The right to earn a living by writing bail bonds is a property right that enjoys Constitutional protection. [citing *Decker* and *Font*]. Castaneda sought a declaratory judgment and temporary injunction in this case to protect this constitutionally protected property right, which he contends is threatened by the collection of differential bail bonds and the rules imposed by the Sheriff. We hold that Castaneda has standing to bring this case.”).

⁵ See Exh. 1 (Administrative Order No. 2019-01 amending Local Rule 9.1). All exhibits are true and correct copies of the original and incorporated by reference as if set forth fully herein.

4.11. Amended Local Rule 9.1 violates Texas constitutional and statutory law in numerous ways.

4.12. First, Amended Local Rule 9.1 requires that all misdemeanor arrestees⁶ will be granted a personal bond (also called a 'PR bond' or 'personal recognizance bond') without a determination of the amount of the bond. Tex. Code Crim. Pro. Arts. 17.01, 17.02, 17.03, 17.04, 17.05, and 17.25 require that a detainee be individually magistrated to determine the amount of bail. Amended Local Rule 9.1 fails to provide detainees with an individual hearing before a magistrate to set the amount of bail and thus violates state law.

4.13. Second, Amended Local Rule 9.1 requires that all misdemeanor arrestees⁷ be released on a PR bond. This violates Tex. Code Crim. Pro. Arts. 17.03 and 17.04, which allows release on a PR bond only if a magistrate, in the exercise of his discretion, concludes that a personal bond is appropriate.

⁶ The only exclusions are (i) individuals who violate a protective order; (ii) certain assaults; (iii) 2nd DWIs; (iv) individuals arrested while on pretrial release; (v) failure to appear while on pretrial release; and (vi) individuals arrested while on community supervision following conviction of a Class B misdemeanor or greater.

⁷ Again, excluding only the detainees identified in footnote 6.

4.14. Third, Amended Local Rule 9.1 prefers PR bonds to other forms of bond, in violation of Articles 17.01, 17.02, 17.03, 17.04, and 17.15 and Texas common law, which require an individualized assessment of the amount of the bond and prohibit differential amounts.⁸

4.15. Fourth, Amended Local Rule 9.1 § 4 prohibits use of secured money bail as a condition of pretrial release at any time in the pretrial period for any misdemeanor arrestee.⁹ Tex. Occ. Code § 1704.201 requires the sheriff to accept or approve a bail bond executed by a license holder in the county in which the license holder is licensed if (1) the bond is for a county or district case; (2) the bond is executed in accordance with chapter 1704 of the Occupations Code and the local county bail bond board rules; and (3) a bail bond is required as a condition of release of the defendant for whom the bond is executed. Amended Local Rule 9.1 violates Tex. Occ. Code § 1704.201 because it requires the sheriff to reject an otherwise valid bond. For example, if a warrant is issued for a defendant's arrest and he is apprehended in another county, that defendant is entitled, pursuant to

⁸ See *Professional Bondsmen of Tex. v. Carey*, 762 S.W.2d 691, 693 (Tex. App. – Amarillo 1988, no writ).

⁹ Again, excluding only the detainees identified in footnote 6.

Article 15.17, to an individual hearing before a magistrate in the county of arrest (or, if more expeditious, before a magistrate in any other county), who may require a cash or surety bond. Also, Amended Local Rule 9.1 violates Tex. Occ. Code § 1704.201 because it requires the sheriff to reject an otherwise valid surety bond in favor of PR bonds and ‘General Order Bonds’, a creature unknown under Texas law. The sheriff has a ministerial duty to accept bonds that comply with Texas law. Amended Local Rule 9.1 § 4 would prohibit the sheriff from accepting otherwise valid surety bonds, in violation of Tex. Occ. Code § 1704.201.

4.16. Fifth, Amended Local Rule 9.1 § 9 outlines the putative requirements for a bail hearing. It requires a factual determination by clear and convincing evidence. This violates Tex. R. Evid. 101(e)(3)(C), which provides that the rules of evidence do not apply to proceedings setting bail.¹⁰ It also violates Tex. Code Crim. Pro. Arts. 17.01, 17.02, 17.03, 17.04, 17.15, and 17.25, which provide that the magistrate has discretion to determine the amount of the bail. It fails to consider funds available from the detainee’s

¹⁰ The Rules of Evidence do apply to proceedings to deny, revoke, or increase bail, and Article I, Sections 11b and 11c provide for factual determinations based on a preponderance of the evidence.

family, as required by law.¹¹ Most importantly, however, it provides for a least restrictive means analysis, which violates Tex. Code Crim. Pro. Arts. 17.01, 17.02, 17.03, 17.04, 17.15, and 17.25 and Texas common law which prohibit differential bail amounts.

4.17. Sixth, Amended Local Rule 9.1 §§ 12 – 15 authorize the Sheriff to deviate from the requirements of Texas law by refusing to enforce any surety bonds that don't comply with the Amended Local Rule 9.1, even if those surety bonds were validly issued in another county, in violation of Tex. Occ. Code § 1704.201. Moreover, they provide for a “General Order Bond” in a preapproved form which has no amount and cannot, by definition, contain the individualized determination of the amount of bail required by Tex. Code Crim. Pro. Arts. 17.01, 17.02, 17.03, 17.04, 17.15, and 17.25.

4.18. In promulgating Amended Local Rule 9.1, Judicial Defendants are acting in their official capacity as policymakers, not in their judicial capacity.

¹¹ See, e.g., *Ex parte Willman*, 695 S.W.2d 752, 754 (Tex. App. – Houston [1st Dist.] 1985, no writ) (rejecting excessive bond claim because defendant failed to establish that he had exhausted his funds and those of his family).

4.19. Judicial Defendants have authority to implement local rules so long as those rules comply with the Texas Constitution and Texas law. However, their attempted implementation of Amended Local Rule 9.1 violates Texas constitutional and statutory law and thus is *ultra vires*. Sheriff Gonzalez is further bound to uphold the Texas Constitution and Texas law, and thus should be enjoined from enforcing the Amended Local Rule 9.1 as that would be *ultra vires*.

4.20. Failure to enjoin implementation of Amended Local Rule 9.1 will deprive plaintiffs of their liberty and property interest under the Texas Constitution in earning a living writing bail bonds.

4.21. All conditions precedent to recovery have occurred or been performed.

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V. Causes of Action

5.1. Pursuant to Article I §§ 13 and 19 of the Texas Constitution, plaintiffs seek the equitable remedy of a temporary restraining order, temporary injunction, and permanent injunction enjoining defendants and their successors from implementing Amended Local Rule 9.1.¹² Plaintiffs will post the bond required by law for a temporary restraining order and temporary injunction. Implementing Amended Local Rule 9.1 will deprive plaintiffs of their ability to make a living by writing bail bonds. A temporary restraining order and temporary injunction are necessary to stop Judicial Defendants from implementing Amended Local Rule 9.1 as it will deprive plaintiffs of their liberty and property interest in making a living writing bail bonds, as protected by the Texas Constitution. A temporary restraining order and temporary injunction are further necessary to stop Sheriff Gonzalez from, *inter alia*, violating his ministerial duty to accept valid surety bonds. As described above, Amended Local Rule 9.1 authorizes Sheriff Gonzalez to refuse to accept a bail bond presented from a license holder in

¹² See, e.g., *City of El Paso v. Heinrich*, 284 S.W.3d 366 376 (Tex. 2009) (“[A] claimant who successfully proves an *ultra vires* claim [against a government official in his or her official capacity] is entitled to prospective injunctive relief, as measured from the date of injunction...”).

Harris County for a county or district court case executed in accordance with chapter 1704 of the Occupations Code and unjustifiably favors PR bonds and General Order Bonds, which are unknown under Texas law. Plaintiffs will suffer irreparable injury in that they will be deprived of their liberty and property interest under the Texas Constitution in earning a living by writing bail bonds. Plaintiffs have no adequate remedy at law because Texas law affords no cause of action for money damages arising from constitutional violations.¹³

VI. Requests for Disclosure

6.1. Pursuant to Rule 194, you are requested to disclose, within fifty days of service of this request, the information or materials described in Rule 194.2(a) – (l).

VII. Jury Demand

7.1. Plaintiffs hereby demand trial by jury and is tendering the requisite fee.

¹³ See *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 150 (Tex. 1995) (“Our State does not recognize a common law cause of action for damages to enforce constitutional rights.”).

Prayer

Plaintiffs pray that Defendants be cited to appear and answer, for a temporary restraining order and temporary injunction enjoining Defendants from implementing Amended Local Rule 9.1, and upon trial, for a permanent injunction enjoining Defendants from implementing Amended Local Rule 9.1, and for all other relief to which they may be entitled.

Respectfully submitted,

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